IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.278 OF 2006

Wanbury Limited. ...Petitioner.

vs.

Shri.Naginder Nagpal & another. ...Respondents.

Mr.Sudeep Sen i/b. M/s.D.H.Law Associates, for Petitioner.

None for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 20th September,2006

P.C.:-

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act,1996, challenging the Award made by the learned Arbitrator dated 18.5.2006. The learned Counsel appearing for petitioner states that the respondents have been served. He undertakes to file affidavit of service within a period of one week from today. The respondents are not appearing. No reply has been filed. Perusal of the petition shows that the arbitration clause contemplates single arbitrator being arbitrator by consent of parties and if the parties do not agree for single arbitrator then each party should nominate their own representative on Arbitral Tribunal. According to the petitioner, he never

agreed to Mr.Raghu Mehta who has made party being appointed as sole Arbitrator. The petitioner, in fact, has appointed Mr.Prathamesh Popat as his nominee on the Arbitral Tribunal. It appears that two members of the Arbitral Tribunal never bothered to appoint third arbitrator as contemplated by Section 11 of the Arbitration and Conciliation Act, and the arbitrator appointed by the respondent viz. Mr.Raghu Mehta proceeded to make the Award.

2. The Award made by Mr.Raghu Mehta which is challenged in this petition is contrary to the arbitration clause as also to the provisions of Arbitration and Conciliation Act, and therefore, the Award is liable to be set aside. In the result therefore, the petition succeeds and is allowed. The Award impugned in the petition is set aside.